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EXECUTIVE SECRETARY

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June 21, 1999

VIA HAND DELIVERY

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: Petition by ICG TELECOM GROUP, INC. for Arbitration of an Interconnection Agreement with BELLSOUTH TELECOMMUNICATIONS, INC. pursuant to Section 252(b) of the Telecommunications Act of 1996  
Docket No. 99-00377

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response To ICG Telecom Group Inc.'s Petition For Arbitration. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch  
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee**

In Re:        ***Petition by ICG TELECOM GROUP, INC. for Arbitration of an Interconnection Agreement with BELL SOUTH TELECOMMUNICATIONS, INC. pursuant to Section 252(b) of the Telecommunications Act of 1996***

**Docket No. 99-00377**

**BELL SOUTH TELECOMMUNICATIONS, INC.'S RESPONSE  
TO ICG TELECOM GROUP INC.'S PETITION FOR ARBITRATION**

Pursuant to 47 U.S.C. § 252(b)(3) of the Telecommunications Act of 1996 ("1996 Act"), BellSouth Telecommunications, Inc. ("BellSouth") responds to ICG Telecom Group, Inc.'s ("ICG") Petition for Arbitration ("Petition"), and says:

**I. INTRODUCTION**

Sections 251 and 252 of the 1996 Act encourage negotiations between parties to reach voluntary local interconnection agreements. Section 251(c)(1) requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in §§ 251(b) and 251(c)(2-6).

Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with numerous competing local exchange carriers ("CLECs") in Tennessee. To date, the Tennessee Regulatory Authority ("TRA") has approved numerous agreements between BellSouth and CLECs. The nature and extent of these agreements varies, depending on the individual needs of the companies, but the conclusion is inescapable. BellSouth has a record of embracing competition and reaching agreement to interconnect on fair and reasonable terms.

During the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.<sup>1</sup> The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.<sup>2</sup> The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties.”<sup>3</sup> A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.<sup>4</sup> The 1996 Act limits a state commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.<sup>5</sup>

BellSouth and ICG entered into a one-year Interconnection Agreement (“Agreement”) on October 27, 1998. The parties began re-negotiating the Agreement on December 18, 1998. Although BellSouth and ICG negotiated in good faith, the parties were unable to reach agreement on some issues. As a result, ICG filed this Petition for Arbitration. Pursuant to the 1996 Act, when parties cannot successfully negotiate an interconnection agreement, either may petition a state commission for arbitration of unresolved issues between the 135th and 160th day from the date a request for negotiation was received. It is clear from the 1996 Act that ICG’s

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<sup>1</sup> 47 U.S.C. § 252(b)(2).

<sup>2</sup> *See generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

<sup>3</sup> 47 U.S.C. § 252(b)(2).

<sup>4</sup> 47 U.S.C. § 252(b)(3).

<sup>5</sup> 47 U.S.C. § 252(b)(4).

Petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.<sup>6</sup>

Through the arbitration process, the state commission must resolve the unresolved issues ensuring that the requirements of §§ 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once the state commission provides guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to the state commission for approval.<sup>7</sup>

BellSouth will respond to each subheading identified in the Petition in a manner that will attempt to clearly reflect what unresolved issues remain to be arbitrated by the TRA:

## **II. SPECIFIC RESPONSE**

In accordance with § 252(b)(3) of the 1996 Act, BellSouth responds to each specifically numbered allegation in ICG's Petition and says:

1. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Petition.

2. BellSouth denies that it is a monopoly provider of telephone exchange services. BellSouth admits the remaining allegations in paragraph 2 of the Petition.

3. BellSouth admits the allegations in paragraph 3 of the Petition.

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<sup>6</sup> See generally, 47 U.S.C. §§ 252(b)(2)(A) and 252(b)(4).

<sup>7</sup> 47 U.S.C. § 252(a).

4. BellSouth is without knowledge or information sufficient to form a belief as to what ICG seeks. BellSouth admits the remaining allegations in paragraph 4 of the Petition.

5. 47 U.S.C. § 252(b)(4) of the 1996 Act limits the TRA's consideration of any petition to the unresolved issues set forth in the petition and in the response. Therefore, the TRA cannot arbitrate any issue not specifically included in ICG's Petition, such as the OSS issue. BellSouth admits the remaining allegations in paragraph 5 of the Petition.

6. BellSouth admits the allegations in paragraph 6 of the Petition. The TRA's deadline for concluding the arbitration appears to be September 18, 1999, not September 20, 1999.

7. BellSouth admits the allegations in paragraph 7 of the Petition.

8. BellSouth admits that the appropriate arbitration standards are set forth in the 1996 Act. Those provisions of the 1996 Act speak for themselves. The remaining allegations in paragraph 8 of the Petition are denied.

9. BellSouth admits that the appropriate arbitration standards are set forth in the 1996 Act. Those provisions of the 1996 Act speak for themselves. The remaining allegations in paragraph 9 of the Petition are denied.

10. BellSouth admits that the appropriate arbitration standards are set forth in the 1996 Act. Those provisions of the 1996 Act speak for themselves. The remaining allegations in paragraph 10 of the Petition are denied.

11. BellSouth admits that the appropriate arbitration standards are set forth in the 1996 Act. Those provisions of the 1996 Act speak for themselves. The remaining allegations in paragraph 11 of the Petition are denied.

12. BellSouth admits that the appropriate arbitration standards are set forth in the 1996 Act. Those provisions of the 1996 Act speak for themselves. The remaining allegations in paragraph 12 of the Petition are denied

#### BELLSOUTH'S POSITION ON UNRESOLVED ISSUES

BellSouth admits that this section of the Petition sets forth ICG's position on the unresolved issues. BellSouth denies that this section of the Petition sets forth BellSouth's position in a complete or accurate manner. In accordance with § 252(b)(3) of the 1996 Act, BellSouth sets forth below its position on each of the unresolved issues identified by ICG in the Petition.

**Issue 1: Until the FCC adopts a rule with prospective application, should dial-up calls to Internet service providers (ISPs) be treated as if they were local calls for purposes of reciprocal compensation?**

No. The FCC's recent Declaratory Ruling, FCC 99-38 in CC Docket Nos. 96-98 and 99-68, released February 26, 1999, ("Declaratory Ruling"), confirmed unequivocally that the FCC has, will retain, and will exercise jurisdiction over ISP traffic. In short, the FCC determined that ISP traffic is interstate traffic, not local traffic. Under the provisions of the 1996 Act and FCC rules, only local traffic is subject to reciprocal compensation obligations. Thus, reciprocal compensation is not applicable to ISP-bound traffic. Clearly, treating ISP calls as local calls for reciprocal compensation purposes is inconsistent with the law and is not sound public policy.

**Issue 2: Should BellSouth be required to offset the amount paid by ICG in the Bona Fide Request process for BellSouth's costs in developing a project plan whenever other parties subsequently request and receive the same service at a reduced rate (because BellSouth has already developed the necessary project plan)?**

No. This is a process for which the CLEC should be responsible. In some cases, the CLEC requesting the BFR/NBR service or UNE may be the only CLEC to ever purchase or use the service or UNE. Even if other CLECs do purchase the new service or UNE at a later date, the initial CLEC has already had the advantage of implementing the service before anyone else. In most businesses, the first company to introduce or produce a new service or product absorbs expenses for planning, developing and testing such a product or service. BellSouth has no control over who submits a BFR/NBR first or how many BFR/NBRs a CLEC may submit; therefore, BellSouth does not penalize or discriminate against the first CLEC to submit a BFR/NBR.

In addition, the administration of such a process for all BFR/NBRs would be extremely labor intensive and expensive. Further, such a process is not required by the 1996 Act. ICG's proposal requires BellSouth to keep track of all BFR/NBRs by CLEC, as well as subsequent purchasers of a BFR/NBR service or UNE in order to recover a portion of the developmental cost from the succeeding CLECs. In one possible scenario, BellSouth would not know what portion of the BFR/NBR cost each subsequent purchasing company would pay, because BellSouth would not know how many, if any, other CLECs would want that particular service or UNE. In another scenario, a plan would involve keeping track of all CLECs buying a certain BFR/NBR service and reimbursing each one equally every time another CLEC purchases the service. This process would be even more administratively cumbersome and expensive than the first one.

**Issue 3: Should BellSouth be required to make available as UNEs packet-switching capabilities, including but not limited to: (a) user-to-network interface (UNI) at 56 kbps, 64 kbps, 128 kbps, 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps; (b) network-to-network interface (NNI) at 56 kbps, 64 kbps, 1.544 Mbps, 44.736 Mbps; and (c) data link control identifiers (DLCIs), at committed information rates (CIRs) of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 384 kbps, 448 kbps, 512 kbps, 576 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps, 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472 Mbps, 1.536 Mbps, 1.544 Mbps, Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps, 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 13.896 Mbps, 15.440 Mbps, 16.984 Mbps, 18.528 Mbps, 20.072 Mbps?**

ICG seeks to require BellSouth to unbundle its existing tariffed Packet Switching Frame Relay Service. Until the FCC issues a final, non-appealable order on Rule 51.319, and with certain other limitations, BellSouth agrees to comply with ICG's request. Cost studies have been prepared for the functions consistent with BellSouth's tariffs.

**Issue 4: Should BellSouth be required to provide as a UNE Enhanced Extended Link Loops (EELs)?**

No. ICG requested what they term an "enhanced extended link" or a local loop combined with dedicated transport. There is no question that these extended links or extended loops would require BellSouth to combine the loop and dedicated transport, a function that BellSouth is not required to perform. BellSouth, however, is willing to perform this function upon execution of a commercial agreement that is not subject to the requirements of the 1996 Act.

**Issue 5: Should BellSouth be subject to liquidated damages for failing to meet the time intervals for provisioning UNEs?**

No. The issue of liquidated damages is not appropriate for arbitration. The TRA lacks the statutory authority to award or order liquidated damages. Even if a penalty or liquidated damage award could be arbitrated, it is completely unnecessary. State law and TRA procedures are available, and perfectly adequate, to address any breach of contract situation should it arise.

**Issue 6: Should volume and term discounts be available for UNEs?**

No. BellSouth should not be required to provide volume and term discounts for UNEs. Neither the 1996 Act nor any FCC order or rule requires volume and term discount pricing.

**Issue 7: For purposes of reciprocal compensation, should ICG be compensated for end office, tandem, and transport elements of termination where ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch?**

No. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. BellSouth will pay the tandem interconnection rate only if ICG's switch is identified in the local exchange routing guide ("LERG") as a tandem. ICG is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide. Therefore, ICG's request for tandem switching compensation when tandem switching is not performed should be denied.

**Issue 8: Until the FCC adopts a rule with prospective application, should dial-up calls to ISPs be treated as if they were local calls for purposes of reciprocal compensation?**

See discussion of Issue 1 above.

**Issue 9: In calculating PLU and PIU, should BellSouth be required to report the traffic on a monthly basis?**

No. BellSouth's tariffs require that the PIU and PLU be calculated on a quarterly basis. To calculate and report PIUs and PLUs more often than quarterly would require additional manpower and expense, and would not improve the current methodology. The quarterly PIU and PLU reporting requirements are both reasonable and efficient. Quarterly reporting is a reasonable balance of (1) the effort required by all companies, CLECs, Interexchange Carriers (IXCs), and Incumbent Local Exchange Carriers (ILECs), to gather the data to calculate the PIU and PLU; (2) the effort required by companies to manually update their billing systems to include those factors for all other companies; and (3) the degree of variability of the factors within the reporting period, such as adds, disconnects, seasonal peaks, etc.

**Issue 10: Should BellSouth be required to provide to ICG a breakdown of the intrastate and interstate traffic that it reports to ICG?**

Although it is unclear what relief ICG is really seeking, to the extent ICG is asking for the underlying data that is used to calculate the PIU, the Interconnection Agreement provides for either BellSouth or ICG to conduct an annual audit to ensure the proper billing and reporting of traffic.

**Issue 11: Should BellSouth be required to commit to provisioning the requisite network buildout and necessary support when ICG agrees to enter into a binding forecast of its traffic requirements in a specified period?**



No. Although BellSouth has been analyzing such an offering, BellSouth is not required by the 1996 Act to commit to a binding forecast with CLECs. While the specifics of such an arrangement have not been finalized, BellSouth is agreeable to continue to negotiate with ICG to meet their forecasting needs.

**Issue 12: Should BellSouth be permitted to impose on ICG a burdensome and lengthy process for becoming a certified vendor before allowing ICG to install, provision, or maintain ICG's own collocation space?**

BellSouth does not require ICG to become a "certified vendor" in order to provision or maintain its collocated equipment arrangement. BellSouth does require the use of a BellSouth-certified vendor for the engineering and installation of equipment and facilities placed within a BellSouth central office or upon a BellSouth property in an adjacent collocation arrangement. BellSouth imposes this requirement on itself as well as any other entity installing equipment and facilities within a BellSouth central office. Use of a certified vendor is necessary to ensure compliance with technical, safety and quality standards. Certified vendors must carry specified liability insurance coverage and are appropriately bonded.

BellSouth's vendor certification process is neither burdensome nor lengthy. In fact, a company applying for vendor certification, such as ICG, is in control over the time period to complete the certification process. The process is no more than the demonstration, through trial installation, that the applicant has reviewed and has become proficient at, and can comply with the technical, safety and quality engineering and installation guidelines and specifications.

**Issue 13: Should BellSouth waive or expedite its certified vendor process for ICG employees whenever there are fewer than fifty (50) certified vendors in a designated area, and/or when a certified vendor is unable to perform the collocation work on a timely basis pursuant to ICG's needs?**

BellSouth should not be required to waive ICG's use of a certified vendor under any circumstances. A central office is the heart of the public switched network. The central office environment necessitates careful planning and deployment of equipment, facilities and support components. Trained technicians that, as demonstrated by their certification, have competence in all aspects of the required engineering and installation activities must execute these activities. Given that the timeline required to complete the certification program is at the sole discretion of ICG, there is no basis to waive or expedite the certified vendor process for ICG.

**Issue 14: Should BellSouth be permitted to require a certified vendor to cross connect ICG's equipment with the equipment of another telecommunications carrier that desires such a connection?**

Yes, under certain conditions. BellSouth requires a certified vendor for its own as well as other interconnectors' equipment and facility installations. Although a collocator is permitted to perform limited cross-connect cabling within its own collocation space, any time cable facilities

must traverse an equipment area, a certified vendor must be utilized. One component of the certified vendor program is the proper placement and installation of overhead cabling. These standards ensure not only the protection of other cables within the same cable racking route, but the equipment underneath the cabling racking in which the new cabling is placed. Unqualified personnel working in overhead racks would significantly increase the risk of damage to BellSouth's and other interconnectors' equipment and facilities.

**Issue 15: Should BellSouth be permitted to impose costly and burdensome security escort requirements on ICG legitimate site visits?**

BellSouth does not require a security escort for ICG's pre-installation site visit or following acceptance of the space. Although BellSouth requires a security escort for the initial site visit, BellSouth offers this escorted site visit free of charge to give ICG the opportunity to review with their selected BellSouth vendor the location of the arrangement, the placement of equipment within the space allocated for their use, and to measure any applicable cabling distances. BellSouth does, however, require ICG to pay for a security escort for any additional site visits following the initial pre-installation visit and prior to space acceptance.

BellSouth has a right and an obligation to put in place security requirements to protect its network and the networks of other collocated carriers. Between the time BellSouth is in receipt of ICG's Bona Fide Firm Order and ICG's space acceptance, BellSouth takes the appropriate measures to secure its premises (e.g., installing security access card reader systems, protecting proprietary information) and waits for confirmation from ICG that BellSouth's security requirements have been met by ICG. ICG's BellSouth certified vendor may visit the site prior to space acceptance without a security escort, if previously arranged. Following space acceptance, ICG is provided access keys to the central office and may access the space twenty-four (24) hours a day and seven (7) days a week, without an escort.

**Issue 16: Should BellSouth be required to limit all charges for the transition of ICG's equipment from virtual collocation to physical collocation to charges for the actual costs of physical labor in making the transition and a records change?**

No. Virtual collocation and physical collocation are two different service offerings. While a collocating carrier has direct access to its physical collocation equipment on a twenty-four hour a day, seven-day a week basis, access to virtual collocation is restricted to limited inspection visits only. Virtual collocation arrangements are most commonly placed within the BellSouth line-up, because BellSouth leases virtual collocation equipment from the carrier and assumes the maintenance and repair responsibility at the direction of the carrier. The conversion of an existing virtual collocation arrangement to a physical collocation arrangement necessitates either the relocation of the virtual collocation equipment to the space designated for the new physical collocation arrangement or the placement of new equipment within the physical collocation space and the decommissioning of the old virtual collocation arrangement.

BellSouth must separately review its ability to provide physical collocation and assess the support components necessary to support the particular arrangement (e.g., space allocation based

on engineering drawings, HVAC, power feeder and distribution, grounding, cable racking). To perform these activities, BellSouth incurs costs. BellSouth recovers these review and analysis costs through the assessment of an application fee. Furthermore, BellSouth is obligated by law to treat requesting collocators in a non-discriminatory manner. Thus, a collocator who previously had virtual collocated equipment within an office must follow the same process and pay the same fees for physical collocation as a collocator who did not previously have virtual collocation within that office. BellSouth assesses space preparation charges on a per location basis, based on the work required to prepare the space. Where BellSouth incurs no preparation costs, no preparation charges are assessed.

**Issue 17: Should BellSouth allow ICG to sublease any of ICG's equipment located on BellSouth's premises?**

BellSouth permits ICG to sublease a portion of ICG's collocation space to other CLECs that are providing telecommunications services through interconnection or access to BellSouth's network. Additionally, BellSouth permits any telecommunications carrier to provision service to any other telecommunications carrier's collocation space, allowing ICG to partner with other telecommunications carriers to better serve ICG's customers.

BellSouth is required by the FCC<sup>8</sup> to allow a competitive carrier to share collocation space with another competitive carrier. In its Order, the FCC requires "incumbent LECs to make shared collocation cages available to new entrants. A shared collocation cage is a caged collocation space shared by two or more competitive LECs...." The FCC explicitly limits the opportunity for sharing of space to caged collocation arrangements. ICG may elect to share a caged arrangement or may choose another collocation alternative. BellSouth, however, does not require the purchase of a cage as a prerequisite to obtaining physical collocation.

**Issue 18: Should BellSouth be required to update its records immediately after transferring a customer number to ICG?**

BellSouth updates customer records promptly and should not be required to update records for ICG any differently than it does for other CLECs and for itself. BellSouth updates its records for CLECs in the same time and manner as it does for BellSouth's retail operations. Generally, the end user's records are updated within 24 hours from the time a correct order has been completed, which is the same for BellSouth and CLECs.

To the extent a problem actually exists, it is caused by ICG's failure to submit the directory listing change at the same time it requests the porting of a number. BellSouth suggested to ICG's representatives that ICG should make directory-listing changes at the same time it submits a local service request ("LSR") to port a telephone number. This would eliminate the problem about which ICG appears to be complaining.

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<sup>8</sup> In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 99-48, at ¶ 41.

**Issue 19: Should BellSouth be required to pay liquidated damages when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in an interconnection agreement between the Parties?**

See discussion of Issue 5 above.

**Issue 20: Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG?**

See discussion of Issue 5 above.

**Issue 21: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)?**

See discussion of Issue 5 above.

**Issue 22: Should BellSouth continue to be responsible when the duration of service failure exceeds certain benchmarks?**

See discussion of Issue 5 above.

**Issue 23: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG?**

See discussion of Issue 5 above.

**Issue 24: Should BellSouth continue to be responsible when the duration of service failure to meet the grade of service requirements exceeds certain benchmarks?**

See discussion of Issue 5 above.

**Issue 25: Should BellSouth be required to pay liquidated damages when BellSouth's fails to provide any data in accordance with the specifications of the interconnection agreement with ICG?**

See discussion of Issue 5 above.

**Issue 26: Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmarks?**

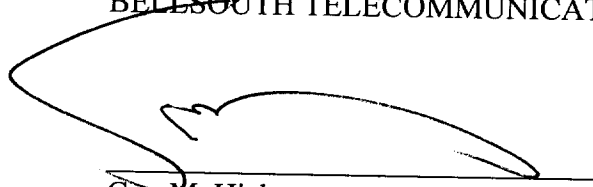
See discussion of Issue 5 above.

13. To the extent a response is required, BellSouth asserts that the TRA's deadline for rendering a decision on the arbitration is September 18, 1999. BellSouth has no objection to the TRA issuing a procedural and scheduling order in this proceeding. BellSouth denies the remaining allegations in paragraph 13 of the Petition.

WHEREFORE, BellSouth requests that the TRA arbitrate this proceeding and grant the relief requested by BellSouth.

Respectfully submitted this 21st day of June 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

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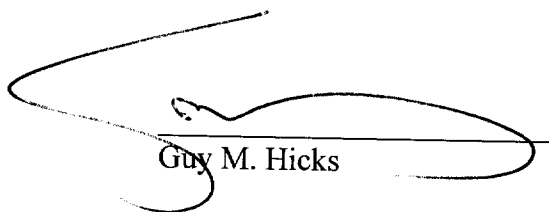
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following parties of record either by hand delivery or by placing a copy of same in the United States Mail, properly addressed and postage prepaid, on this 21st day of June, 1999.

Richard Collier, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0500

Henry Walker, Esquire  
Boult, Cummings, et al.  
414 Union Ave., #1600  
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Nashville, TN 39219-8062

  
Guy M. Hicks